

# Quid Novi

VOL. IV NO. 1

McGILL UNIVERSITY FACULTY OF LAW  
FACULTE DE DROIT UNIVERSITY MCGILL

September 5, 1983  
5 septembre, 1983

## Faculty Review: Law at McGill

### Introduction

In February 1982, the Academic Policy and Planning Committee of the Senate of McGill University established an ad-hoc Committee to review the Faculty of Law, with particular emphasis on the effects of recent budget cuts on a highly specialized program in a relatively small professional faculty. The committee was constituted as follows:

S.O. Freedman, Vice-Principal (Academic), McGill University, Chairman

J.R. Mallory, Angus Professor of Economics and Political Science, McGill University

H. Mintzberg, Bronfman Professor of Management, McGill University

D.A. Soberman, Professor of Law, Queen's University

M. Johansen, Office of the Vice-Principal (Academic), Secretary to the Committee

The Committee met individually and in groups with members of the Faculty of Law, the law librarian, and student representatives on April 29 and 30, 1982 (see Appendix I), after having carefully reviewed the excellent self-study document prepared during the previous three months by a Faculty Committee under the chairmanship of Dean J.E.C. Brierley.

### Historical Perspective

The Faculty of Law at McGill is the inheritor of a long and distinguished tradition. For much of its history it, like other law schools of the past, was largely concerned with the narrow goals of professional training, strictly prescribed by the Bar. Because of its location and the esteem in which the University was held, however, McGill's Law Faculty at the same time attracted and produced numerous illustrious

legal scholars and others who contributed much to the public life of Canada. Nor should it be forgotten that some of the first women lawyers were among its graduates.

Initially, most of the teaching was done by practicing lawyers on a part time basis. From the 1920's on, there was a small core of full time staff that was, by Canadian law faculty standards, active and eminent in legal scholarship

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## Meet Prof. Simmonds

Quid Novi Editor Demetri Xistris interviewed the new Associate Dean Ralph Simmonds this summer. This is the first of a two part interview.

**Quid:** Can you give us a little bit about your background that brought you to McGill?

**Simmonds:** I'm 33 years old. I received my Bachelor of Laws degree at the University of Western Australia. I then did a Masters degree in securities regulation at the University of Toronto where I met Rod Macdonald, another member of the Faculty here who encouraged me to think about teaching law in Canada which I had not done previously. I approached a

number of schools and the University of Windsor took me up where I taught for 4 years from '76 - '80. From Windsor I came to McGill and I'm starting my 4th year. I currently teach Business Associations and Comparative Company Law. I have also taught Contracts, Civil Procedure, and Commercial Transactions at McGill. I'm generally speaking a Corporate-commercial lawyer and my main area of research is securities regulation, al-

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There will be a Quid Novi meeting for all Staff and other interested students on Wednesday, September 7, at 1 p.m. Check the Quid Notice Board outside the Quid office for place.

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though I have also done research in commercial law, particularly secured financing with moveables and personal property law where I'm working on a project for the Ontario Law Reform Commission and in basic business association law where I'm completing a textbook with 2 others which should be out in 1984-85.

**Quid:** You have been Associate Dean for a few months now. What have been your first few impressions?

**Simmonds:** It's physically quite demanding. It is not as easy as it was when I was a professor to carve out blocks of time to do research. It's been extremely interesting and overall subject to day-to-day vicissitudes very enjoyable. The main thing that I have gotten out of it and I think this will continue is that I'm learning more and more about the institution and also I'm being put into contact with a wider range of students than previously had been the case.

**Quid:** Have you been able to define a function for the Associate Dean's Office? In other words can you give a definition of what this office is supposed to serve?

**Simmonds:** I can answer that best by telling you what the Associate Dean is clearly here to do. He's here to listen to students who have concerns that are likely to affect how they do with us. These concerns can be solely academic problems to personal ones that are getting in the way of their enjoying their stay with us. So I will listen to any student with any concern affecting him or her.

**Quid:** The general impression at McGill is that the Law School is top heavy -- that means it is overburdened with rules and regulations

which hamper flexibility and responsiveness. Many people see the Associate Dean as a buffer between the Administration and its rules and many people see Prof. Simmonds as very "rule-oriented". How are you going to apply rules?

**Simmonds:** I would like to think that I would serve as a buffer, if I take your meaning correctly. I am fundamentally a fairly cautious and conservative lawyer by training and I have always found rules of the sort that exist in this institution as being extremely useful guidance, usually in cryptic form, as to what is an appropriate way to run a large institution with a large number of competing concerns that are being held in balance. One of the things though that I try to do is that I always try to understand why a rule exists, what purpose it serves, how it fits in with other rules, so that at the very least when I have to say to someone, "I can't do this for you" or "it won't wash", I can give that person an explanation that goes beyond the words of the rule and into the reasons why we have such a rule.

To the extent that I discover a rule framework that doesn't make sense to me, I can and I will recommend that it will be changed. I

am one of the very few professors, because I sit on many committees, who is in very close contact with these regulations. I can say as a professor I really very poorly appreciated what those regulations were, how many they were and how many parts of the life of the school they reached into. I am being very careful not to say whether I find the overall structure appropriate because being a cautious conservative lawyer my predisposition is to assume that it is on balance, probably appropriate - it wouldn't have lasted so long if it wasn't - but that doesn't create any presumption in favour of continuing the whole package.

Now there are a lot of discretionary features built into the rules, in fact there are a great many regulations in respect to which the Dean and his delegate can exercise his dispensing power. One of the reasons to which I pay attention to guidelines which I have inherited from my predecessors as well as guidelines that the Dean issues and publishes, is that they help to inform the exercise of that dispensing discretion.

So if there is a rule that makes no sense at all to a student I am perfectly amenable to hearing that student out. At the end of

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the day I may say either you have misunderstood the regulation and the purpose it serves in your case is eminently reasonable or alternatively although dispensing discretion may be exercised, it is the practice of the institution not to do so for good reason which I have investigated and accordingly I can't do it in your case.

But I have tried to investigate thoroughly each student's complaint that was deeply felt and all the possibilities that might exist to alleviate the problem.

**Quid:** But as to the application of those discretionary rules are we to expect a "cautious and conservative approach"?

**Simmonds:** Yes, I think it follows from what I've said that that is true, but the label of conservative is capable of covering so many different ways of acting. The way I understand the term it is an extension of cautious. Cautious is what tells me to consult past practice and think before I act even if I'm 95% confident of what I'm doing is right for all concerned I will still try and think some more. That was the lesson that practice taught me that I find the most useful thing that the practice of law teaches anyone. Even if you're sure give it one more run through, think about it.

Conservatism is what tells me if I'm in doubt go with the received wisdom. Now in order to arrive at a position that I'm balanced in doubt I'm going to have to have gone through a lot of thinking.

So the overall effect of my administration may not be conservative in its result, if you interpret conservative to be simple replication of the most limited

view of the office entertained in the past. On the other hand, I think I'm going to be the kind of person who will try to be careful because it is not in anyone's interest - student or institution - that we ignore what we've inherited.

A good conservative, using Edmund Burke's sense of the word is someone who, if he rejected past wisdom, knew what he was rejecting and why he was rejecting it. It seems to me the silliest attitude of all to either be ignorant of past practice or to reject past practice without knowing why you were doing it.

**Quid:** Former Associate Dean Macdonald told me that the hardest time of the year for the Associate Dean is that time between the beginning of 2nd semester and study week, especially with regards to your role in speaking to all the first year students who failed an exam. What is your perspective of the McGill failure rate?

**Simmonds:** My view of the failure rate is that it doesn't seem, on what I've seen so far, to be massively out of line, from what I've seen at the University of Windsor; and at Windsor it

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# Quid Novi

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## Editorial

The big news this summer that will slowly piece itself together as we reunite ourselves with our classmates this week is the tremendous success that McGill Law students have achieved in placing themselves amongst the best law firms and justice departments in the country. From these results it is quite evident that McGill has outpaced every law school in Canada for articling positions. The strength is unparalleled in recent year's memory.

However this success must be attributed towards the student which in each particular case has exemplified the qualities that brought each of them to law school. Let us not delude ourselves that the Faculty has played any immediate role in our placement achievements. On the contrary, the Faculty has shown over the past a lack of concern with giving each of its students a fair shot at the job market when compared to other law schools. For this I am referring to the high failure rate that the Faculty employs and the lack of an operating placement office. Both of these issues deserve a re-evaluation by those that determine policy at the Law School.

I recently had a classmate tell me that a Toronto firm could not understand why this articling student-to-be went to McGill where the grading system is a definite disadvantage to entering the job marketplace. In an economic environment of the legal profession that is both harsh and competitive does it make any more sense to burden your own students with a high failure rate and a low bell curve?

We might not yet realize the resulting effect of all of this. To students jobs are important. They are not necessarily the most pressing reason that we attend law school. Yet as a serious condition of our entering McGill is the notion that the Faculty will do what it can to help its student body prepare itself for the future and similarly not to hinder our chances in any unreasonable manner. And when students perceive that the Faculty is giving them a rough going over then they are reticent to ever return to the Faculty as good standing alumni. And it is the good standing alumni that can provide the assets that can make McGill a sought after law school by aspiring lawyers.

**Demetrios Xistris**

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was not massively out of line with the Ontario schools. One of the things I have not done is that I have not sat down with the statistics, because I haven't seen them, that show the failure rates over the last ten years and compared them with failure rates at say, the six Ontario schools.

**Quid:** We had a 20% failure rate in Obligations alone this year. That seems to be very high.

**Simmonds:** It's high, and it's particularly high for a large enrollment course. But it's not extraordinary

in the experience of other law schools that I know of. It's unusual but it's not unknown. I am awaiting with some interest the results of the analysis that the LSA is doing on historical results and I'll be interested to see how they compare with other institutions. If the figures show a rate that is out of line entirely with other schools then we have a job of explanation at the very least, and I'm hoping we will undertake it in a constructive fashion.

**Quid Novi:** Part Two will be in next week's issue.



# SAO

Recent Release From  
Student Affairs Office

## QUESTION I (90%)

Time allocated: 16 minutes,  
34 seconds.

The Federal Parliament has recently enacted a piece of legislation entitled "An Act to repeal the Province of Manitoba and other obscure territories. Upon learning this, the A.G. for Manitoba filed a complaint to the International Court of Justice stating, inter alia, that such legislative action infringes the United Nation's Charter of Human Rights, to which Canada wholeheartedly has pledged its support.

Subsequently, the AG's for Ontario and Alberta have agreed to institute proceedings in the Federal Court of Appeal under subs. 28(4) of the Federal Court Act to determine the Constitutional validity of such action taken by the AG of Manitoba.

You have been asked by the Lancashire Association of Wool Manufacturers to briefly outline the various issues affecting their status and capacity to intervene on behalf of the Government of New Brunswick in the Federal Court of Appeal and the International Court of Justice, and to discuss thoroughly, all political and socio-economic consequences pertaining to such an intervention.

## QUESTION II (10%)

Time allocated: 2 hours, 43 minutes, 26 seconds.

Ted Marshall was driving his new Austin convertible on a midsummer's night 48 kms out of Winnipeg when the Federal Act (*supra*) was passed. He had just crossed the border from Ontario

THEORIE GENERALE DU DOMAINE PRIVE, Jean Goulet, Ann Robinson et Danielle Shelton

Cet ouvrage traitant du droit des biens a été préparé par des professeurs de droit de l'Université Laval et une spécialiste en éducation. Ce livre a été conçu principalement pour les étudiants en droit pour qu'ils puissent acquérir plus facilement et plus rapidement des notions et des connaissances en droit des biens.

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CODE DU TRAVAIL, à jour au premier septembre 1983

Ce Code du travail comprend les modifications apportées par le Projet de loi 17 ainsi qu'un texte de Mes Toupin et Barette qui commentent ces modifications.

Prix: 6\$

ABREVIATIONS JURIDIQUES, Denis Le May et Edouard Casaubon

Les auteurs ont préparé un volume comprenant près de 500 abréviations juridiques (collections, recueils, répertoires, tribunaux et abréviations relatives à la méthodologie).

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where a search warrant had been delivered that morning. In view of the AG for Ontario's action in this affair, is the warrant effective in Lancashire? Would your answer be different if Ted was divorced? Discuss.

Have a good summer.

See you in August

Note from a McGill Law Professor (the scrawl here is hard to read): To Exam Board....require urgent opinion....please advise....on propriety of such an exam..

## Law Journal

To all upper year students with at least two years remaining at McGill Law School.

Please be advised that applications to the McGill Law Journal are now being received. To apply, simply submit a typed curriculum vitae, indicate whether you

are seeking membership on the Editorial Board or Management Board, and include a short statement describing your reasons for wishing to work on the Journal. Interviews will take place in mid-September, and a short assignment will be handed out on September 14th at 5 p.m.



# CLASSIFIED

Mr. Martin Burton  
9, Albion Terrace,  
Burnley, Lancashire,  
England, BB114 QE  
Tel: ENG:-55624

26th July, 1983

Hello my name is Martin Burton. I am 22 years old born (23/7/61), I am a full-time student at the local college where I am studying 7 "O" levels and 4 "A" levels. If successful in the next two years and I pass my "A's" I would like to go to Oxford or Manchester University and study Law. Eventually, probably like many of yourselves I hope to become a Solicitor or Barrister, but, I did not write to bore you with facts about myself but, to ask if any girl of a similar age and studying Canadian law, would like to correspond with me?

I would truly love to hear about life in and at one of Canada's universities.

My reason for this unusual enquiry is: one day if successfully qualified I hope to make a life for myself in Canada and would thoroughly enjoy exchanging ideas about England and Canada.

I am not a totally boring person who goes on about law. I enjoy many different hobbies and interests which range from my part-time job as a Special Constable, to parachuting, photography, music and reading.

I do hope my letter will persuade someone to answer and I promise to answer any letters sent.

Looking forward to hearing from a new friend in the near future.

**Martin Burton**

# LSA Memo to students

**Dear Fellow Student,**

On behalf of the new executive of the LSA, it is my pleasure to fill you in on some of the work that has been going on during the summer and the activities planned for next year.

**Selection of a new Law Dean:** The present term of Dean Brierley will end on June 1, 1984. A university committee will be considering the appointment of a Dean during the autumn. Your input into this process will be sought and encouraged. Watch the early issues of Quid Novi for details.

**Exam Schedules:** Exams. Hardly a pleasant thought during the summer, but a reality which must be faced eventually. Based on the course preferences you have indicated on the early course selection forms, your class presidents will be drawing up a schedule for both terms during August which will be available at registration. This should help avoid some of the needless confusion of past years, and will enable those of us who wish to do so to make course adjustments during course change week.

**Student Representation on Faculty Council:** Under the leadership of last year's executive, student rep was increased to a ratio of 1:4. We look forward to a positive relationship of co-operation with faculty members this year, while ensuring that student concerns are represented effectively.

**Faculty Review:** Last year the university-commissioned faculty review report was released. An LSA committee has been working on the issues raised in the report during the summer, and its recommendations will be published in Quid Novi.

**Clubs, Organizations and Activities:** This year, a new system will be instituted to assist the clubs in the scheduling of events so that needless conflicts among student activities may be avoided.

As always, your participation in LSA activities will be encouraged. Let's continue to have the highest level of student participation on campus. Until September,

**Yours sincerely,  
Stephen Fogarty  
President**

## Quid Novi Announcement

Quid Novi welcomes articles, letters to the editor, and notices of coming events. All submissions must be received by Friday for publication in the following Wednesday's paper. The Quid Novi office is beside the LSA office and the Bookstore. Meetings are held every Monday at 1 p.m.

Le comité de rédaction vous invite à contribuer au Quid Novi en nous faisant parvenir des articles, des lettres au Quid Novi, ainsi que toute annonce concernant les activités à venir. Nous nous prions de les soumettre avant le vendredi de la semaine précédant la publication du journal. Le bureau de Quid Novi se trouve à côté du bureau du LSA. Les réunions se tiendront tous les lundis à 1:00 pm.



# LSA Minutes

**Editor's Note:** These are the unofficial minutes until approved by LSA Council in September.

## Minutes of the First LSA Council Meeting

**Held**  
**Monday, June 13, 1983**

Re: Selection of a new Dean of Law

**Present:** Stephen Fogarty, Todd Sloan, Marc Barbeau, Michael Shuster, Ian Fraser, Brian Ward, Carol Sheppard, Jean-Pierre Blais, Fred Hoefert, Véronique Marleau. (Quorum).

Opening of the meeting: 7:30 p.m.

### 1. Selection of a new Dean of Law:

a) Establishment of a committee of the LSA Council to deal with the issue: After discussion, the motion (see enclosure) moved by Tod Sloan and seconded by Fred Hoefert was passed 9:1 (Brian Ward opposed).

b) Appointment of an Alternate member of the Board of Board of Governors committee:

i) Nominations: Richard Janda nominated by Ian Fraser; John Limburner nominated by Brian Ward.

ii) Election: Limburner: 1  
Janda: 7  
Spoiled: 1  
Richard Janda elected.

c) Appointment of two LSA members to sit on the LSA committee earlier established:

i) Nominations: Carol Sheppard nominated; Fred Hoefert nominated.

ii) Elections: All concur. Carol Sheppard and Fred Hoefert elected.

d) Proposal to invite Roger Cutler to sit on the LSA committee earlier established:

blished:

Seconded by Fred Hoefert; all concur. Proposal passed unanimously.

### 2. Exam Scheduling

To be done in early August.

### 3. Suggestions:

Consider having a poll in the fall concerning the selection of the Dean.

Consider eventually adopting some procedures that would insure that people show up at meetings.

Meeting adjourned: 9:00 p.m. Motion to adjourn moved by Fred Hoefert, seconded by Véronique Marleau. All concur.

Signed,

Stephen Fogarty  
President

Véronique Marleau  
Secretary

### Motion

That a committee of the LSA Council be established to

deal with the issue of selecting a new Dean of Law.

That this committee be composed of

i) two members of LSA Council

ii) the LSA members chosen by the LSA to sit on the Board of Governors committee to select a Dean of Law  
iii) such other persons as the LSA committee or Council shall appoint.

That taking into account the need for confidentiality in the Dean Selection committee this LSA Committee be mandated to:

i) meet periodically to discuss the Dean selection process

ii) consult LSA members on the selection process by appropriate means

iii) report to each LSA Council meeting and to a General Assembly the first half of September 1983.

That we immediately appoint an Alternate member of the Board of Governors committee and that the LSA members of the University committee be elected at the aforementioned General Assembly.

## Welcome Week

Le Comité Social, cette année va essayer de rendre vos études plus agréables en organisant différents événements, tous plus palpitants et géniaux les uns que les autres. C'est ainsi qu'au cours de l'année, vous aurez la chance de participer à des concours de danse et de photographie. Vous pourrez aussi "parader" dans un défilé de mode époustouflant, ou encore aller vous sucrer le bec à la cabane à sucre. Il y aura aussi des excursions de ski et des "parties" fantastiques où vous pourrez vous défouler. Plusieurs idées sont encore à

l'étude telles par exemple une descente en canot pneumatique et un voyage à New York.

Avant tout cela, la "Welcome Week" vous mettra certainement l'eau à la bouche. Voici d'ailleurs le programme:

Mardi, 6 sept. 11:30-1:30 - Bière et Pizza- Common Room

Merc, 7 sept. 12-2 - Sandwiches et cafés - Common Room

Jeudi, 8 sept. 12-2 - sal-

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# Legal Bits

by Richard Kurland

The computerized court record system of Québec is an example of a rational and advantageous implementation of computer technology. By means of display units in court houses, one can rapidly and free of charge have access to the file that concerns them. Professionals in the legal field probably are most likely to make extensive use of the computerized court records. The Minister of Justice uses the system regularly in order to evaluate the consequences of changes in existing laws or new laws. As well, the computer system allows the Minister to follow prisoners' records and movements (appearance in court, etc.), and the enforcement of sentences imposed by the court.

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ades, jus et cafés - Common Room

Vendredi, 9 sept. 12-2 - bière et pizza - Le Pit; 4-5:30 - partie de softball au Réservoir de McGill; 5:30-????? - "Happy Hour", Thompson House.

Lundi, 12 sept. 12-2 - hot dogs et bière dehors.

Mardi, 13 sept. 12-2 - rencontre des représentants de groupes et beignes et cafés.

Mercredi, 14 sept. 4-6 - vin et fromage, Common Room.

N.B. Vos suggestions seront toujours appréciées....

Au plaisir de se rencontrer,

Sylvie Lévesque

Social co-ordinator

In Montreal, crown attorneys have display units at their disposal where they can consult the list of current records, make a selection and verify the development of cases for which they are responsible. The police may make use of the system as a tool for drafting summonses for plaintiffs or witnesses to appear in court. The Government of Quebec already uses the system to its advantage. For example, the ministère des Transports, through its Bureau des véhicules automobiles, is responsible for the enforcement of the law concerning demerit points. The computer system registers the court judgements for all such infractions. As well, Le ministère des Affaires sociales has access to vital information concerning separations, divorces, modifications of matrimonial regimes, etc. A great number of committees or groups, either working for the Government of Quebec or mandated by it, may be authorized -- within the scope of their mandate -- to consult samples of pertinent records.

Because of the confidential nature of the records, the integrity of the data stored in the central file and the access to this information are rigorously controlled. Only duly authorized personnel of the court offices, using special codes which are changed frequently, can modify the contents of the records in the

central file. Access to this information is carefully controlled by codes which identify the user, and which give access only to information that the user is authorized to consult. The court administrator can instantly make the files inaccessible to various users. The original documents used for registering the data are preserved in the court offices and can be made available to users in case of computer breakdown. An added precaution is provided by a complete copy of the data bank, safeguarded separately, away from the computer.

The net effect of this computer system, with regard to the individual, is that it is becoming much easier for the record-keeping system to affect people than for people to affect the record-keeping system. An individual's control over the use that an organization makes of data obtained about him is lessening. One must ask whether in Quebec today it is possible to prevent information that has been obtained for one purpose from being used for other purposes without the consent of the person involved.

The computer system offers order and efficiency to dealings between citizens. However, the key weakness in our system is right at the top. The Minister of Justice, a member of Cabinet, has unrestricted access to all data. Can it be seriously contended that the Minister of Justice, and hence the Cabinet, will never be tempted to use or abuse the data for political purposes?

There will be a Quid Novi meeting for all Staff and other interested students on Wednesday, September 7, at 1 p.m. Check the Quid Notice Board outside the Quid office for place.



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and research. Memorable names in that group included H.A. Smith, P.E. Corbett, John Humphrey, F.R. Scott, and Maxwell Cohen. They accounted for McGill's pre-eminence in the key public law areas of international and constitutional law and, incidentally, had considerable influence on Canadian foreign policy and constitutional development. Younger men at McGill are continuing in that role, even though McGill's traditional position in these vital areas is being challenged by other Canadian law faculties. In addition to its traditional strengths, McGill's faculty of Law has more recently developed new and important areas of academic interest and research.

At present the major areas of endeavour of the Faculty are: the professional training Program in Civil Law in the only English language law faculty in Quebec; the professional training program in Common Law; the National Program which trains students in both the Common and the Civil Law traditions; research work undertaken by the faculty members; and the specialized research programs of the Institute of Comparative Law and the Institute of Air and Space Law.

**"The internal factor involves real or perceived issues of governance, particularly that of student representation on Faculty Council, and faculty attitudes towards students."**

These various goals are not wholly congruous with one another, and their continued achievement puts an exceptional strain on a staff that is both overworked and quite insufficient in numbers. The Law Faculty has always operated with inadequate resources. As a consequence, it neither grew at a normal rate in good times, nor was it able

to absorb cuts without major damage in bad times. Its competitive position may soon be eroded vis-à-vis a small number of other Canadian law faculties that seem to have better financial support to meet the demands of contemporary legal scholarship.

### Future Challenges for the Faculty of Law at McGill

The University needs a strong Law Faculty, not only to meet the expectations of the communities it serves, but also to add stimulation and strength to related units such as the Faculty of Management, the social science departments in the Faculty of Arts, the School of Social Work, and the School of Urban Planning in the Faculty of Engineering. It has the potential to develop interesting and useful programs in medical and health law in collaboration with the Faculty of Medicine.

The University's capacity for well-rounded research in the social sciences and humanities will lose much if the position of the Faculty of Law is not strengthened. For example, the methodology and problems in a number of social sciences, such as political science, sociology, and economics, complement the work of modern legal research. In fact, law, as a research discipline, is a social science.

### General Overview of the Faculty and Its Strengths

The Review Committee was favourably impressed with the quality of the teaching staff in the Faculty who are, for the most part, well qualified, conscientious, committed, and enthusiastic. They devote a great deal of attention to the structure and curriculum of their teaching programs. The dedication of the staff is probably the Faculty's greatest strength.

The students interviewed were articulate and intelligent, including those perceived by some members of the academic staff as malcontents. The student body as a whole was perceived by

**"The complexity factor is, for instance, reflected in the necessarily elaborate regulations governing the programs that are sometimes viewed by the students as excessively bureaucratic."**

the reviewers to be thoughtful and committed; moreover, they seemed to be very dedicated to a variety of student activities, a number of which are directly related to their academic training.

The intended strategy of the Faculty, i.e. its attempt to position itself nationally, and not only to offer Civil and Common Law programs but also to integrate them seems to be a well conceived plan. No one spoke against the strategy and almost everyone praised it; although many of those interviewed referred to the potential of the Faculty, as if even more could be accomplished given different circumstances and additional resources.

It would appear, therefore, that certain factors seem to interfere with the full realization of the intended strategy. One is the budgetary constraint, that particularly concerns staffing but also affects administrative support, library facilities, space allocation, etc. The resource factor is presumably beyond the direct control of the Faculty.

The second factor is the inherent difficulty in maintaining a balance between the two legal philosophies and in administering undergraduate programs with separate requirements. The complexity factor is, for instance, reflected in the

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necessarily elaborate regulations governing the programs that are sometimes viewed by students as excessively bureaucratic. These difficulties are unlikely to disappear and should be recognized as being intrinsic to the Faculty, but the resolution of other problems may minimize their impact.

The third factor that exists is largely within the control of the Faculty itself. The internal factor involves real or perceived issues of governance, particularly that of student representation on Faculty Council, and faculty attitudes toward students. Here, the Faculty perhaps gets in its own way, interfering with the full utilization of a highly competent staff and a generally superior student body, and with the full development of the immense potential of the National Program

Under the distinguished direction of Professor P.-A. Cr  peau, who has played a major part in the recent revision of the Civil Code, the Institute of Comparative Law is currently engaged in a number of important endeavours such as the Bilingual Civil Law Lexicon Dictionary and Civil Law Treatise projects. The Civilians at McGill are uniquely endowed with a scholarly approach and have the capacity to form one of the best centres of Civil Law scholarship in Canada.

The Institute of Air and Space Law is a unique establishment with a world-wide reputation. The centre developed naturally from the links formed between the Faculty of Law and the international air organizations located in Montreal. Dr. Nicolas Matte is a well known scholar in his field and works very hard at furthering the reputation of the Institute.

**Detailed Analysis of the Faculty**

In the self-study document, the Faculty has listed among its first priorities the conduct of excellent teaching and research, and the recruitment of good students and staff in both the Common and Civil Law programs. The excellence of the undergraduate teaching program as a whole is perceived as the essential base for all of the Faculty's other operations and its continued improvement constitutes the primary challenge for the future.

As a part of the Faculty's stated or implied

**"The students interviewed were articulate and intelligent, including those perceived by some members of the academic staff as malcontents."**

priorities, the Review Committee wishes to offer its opinion that in the 1980's, McGill's Faculty of Law maybe have a unique opportunity to take advantage of its existing and traditional strengths. The Charter of Rights in the Canadian Constitution will probably have a profound effect on the everyday practice of law in Canada. A whole new vocabulary and legal strategy will need to be learned by both practicing lawyers and judges within the next few years. McGill, with its unequalled reputation in both constitutional and human rights law, is in an exceptional position to influence this development in a variety of ways. It can strengthen its undergraduate program to meet the new demands on the profession; it can do much in the way of continuing education for practitioners; and it can confidently enter a rich new field of

scholarly writing and research. Although this may require more manpower than the Faculty presently has, it would be a great shame not to take advantage of the opportunity.

**The Mission of the Faculty**

The mission or goal of the Faculty is in large measure shared by all law faculties in Canada: to provide a university education in law which will, at the same time, prepare a large majority of students to pursue the practice of law and to enable others to undertake research in legal problems, the relation of law to other disciplines, and the role of law in society. In addition, the Faculty has long been aware of its unique position in Canada, in terms of legal systems, culture and language, as a primarily anglophone institution in a francophone environment. In the late 1960's, the Faculty set up the National Program. Whatever may have been the nature of the original debate about its establishment, the National Program is now an integral and essential element of the Faculty's existence. At the same time, it explains and justifies the unique qualities of the Faculty and some of its problems.

The National Program, in teaching simultaneously the two great Western legal traditions, is by its very nature more comparative, more philosophical, and inherently more academic than any program based in just one of these traditions. The opportunity to participate, at the professional level, in both legal systems is exciting and exhilarating, inspiring new insights and a greater depth of understanding in each. In Canada, where one quarter of the inhabitants live within a Civil Law system

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and the rest within the Common Law, the Faculty has special importance. There seems no doubt that its mission and its aspirations are both worthy and worthwhile. During the fifteen or so year that the National Program has been functioning, a very substantial effort has been made to achieve its goals, with considerable success.

The nature of the program -- providing two, 3-year, professional degree programs side by side, with both degrees available in the course of 4 years -- makes it very complex and difficult to administer. In addition, the resources needed to carry out this ambitious scheme are greater than those required in a law school of equivalent size carrying on a program in just one legal system. The resources, however, need not be twice as large, since there is a large body of federal law and administration to be learned by law students that is common to both systems.

Although there are subtle differences in approach to and interpretation of the field of federal law, there is probably much to be gained by blending students and teachers from both traditions in teaching these subjects. Some subjects lend themselves to early comparative treatment and can probably benefit from being joined at the introductory level; e.g. corporate law, commercial transactions, conflicts, and administrative law. Even so, the Faculty must mount a full program in three large areas, Civil Law, Common Law and National (federal) Law, while other faculties need support only two. At a very minimum, the Faculty teaches a substantially larger number of subjects in order to achieve the same quality as a one system school. These requirements

should lead inevitably to a more favourable staff-student ratio, and necessarily somewhat smaller classes than at other schools.

## Resources at the Faculty

There is little doubt that the Faculty has a lower level of funding per student than virtually any other law faculty in Canada (See Appendix II). It is true that per student costs seem to shrink somewhat in the larger schools, but these savings are not large.

In any event, by normally accepted resource measurement criteria, the McGill

**"The National Program, in teaching simultaneously the two great Western legal traditions, is by its very nature more comparative, more philosophical, and inherently more academic than any program based in just one of these traditions."**

Law Faculty lags badly. Per student funding is fairly constant at 20% less than both Ontario and Quebec law faculties. All Ontario schools, apart from Osgoode Hall, with Common Law programs alone, are roughly the same size as McGill. U.B.C., with 35% more students, spends 25% more per capita. Even Osgoode Hall, with almost 1,000 students, spends about 13% more per capita. The University of Montreal with 933 students spent over 10% more per student and Laval with 728 students spent 55% more in 1981-82.

With the exception of the University of Montreal, McGill has the poorest staff-student ratio in Canada, 1:22. It is about 30% higher than the averages in the rest of the country, including Quebec, whose average ratio is driven up by Montreal and McGill itself.

Ratios between 1:14 and 1:17 seem to be the norm.

While the shortfall in financial resources is painfully obvious even in a quick overview of criteria, the consequences are most severe in four respects: 1. Because there are essentially no practitioners in the Common Law available in the Montreal area, Common Law subjects must be taught by full time, Common Law trained professors. Because their number is at a bare minimum, any additional compressions in faculty must be reflected in a decrease in the number of full time staff in the areas of federal law and Quebec Civil law. The result has been that these areas, but most especially the Civil Law, have been forced to rely heavily on part time practitioners to teach many subjects.

The forced reliance on part time staff, in turn, causes three problems. First, some basic Civil Law courses, which form the grammar of any legal system, are taught by busy practitioners who do not have the time or the training to provide the depth needed in fundamental areas to give students a proper grounding.

Secondly these busy part timers are physically present in the Faculty for only short periods, making them unavailable for convenient consultation with students in their courses. Furthermore, they carry very little, if any, of the administrative burden of the Faculty and their share falls on the full time staff.

Thirdly, there is a serious question of whether the core of full time Civil Law teachers maintains a critical mass; that is, a sufficient body of committed full time academics to plan and control curriculum, to pro-

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vide the human resources needed for scholarly work and, most importantly, to provide the intellectual stimulus for creative research and the graduate program in Comparative Law. There are only ten professors teaching in the Civil Law program and their time is divided among the other two areas as well. This leaves the equivalent of little more than five full time teachers devoted to the Civil Law program. Even without any further analysis it is obvious that this number must be much smaller than the core faculty in any other law program in Canada, except possibly for the new and very small faculty at Moncton. The lack of full time teachers in Civil Law is a grave problem for the Faculty, with implications for its whole program.

2. The Common Law program is similarly short staffed, with but 12 professors providing the equivalent of less than 7 full time teachers to the program. The comments above about the Civil Law program apply here with almost equal force. There is, however, an additional dimension that Common Law trained teachers are not, at present, members of a local bar in the Common Law, and thus become somewhat isolated from their intellectual roots.

3. The graduate programs are affected as well. Comparative Law needs more academic resources to do research and supervise graduate students, especially in Civil Law. The program could achieve even more with the needed professorial talent.

The Institute for Air and Space Law is virtually autonomous, although its loose links with the Faculty do not appear to cause strain apart from budgetary matters. The demand for places

in the program seems to have increased remarkably in the last few years. There is, however, some concern on the part of the Review Committee about who sets and monitors standards for admission to its graduate programs. The arrangements for review of the academic credentials of applicants are not under the direct control of the Faculty.

The core budgetary allocations for the two Institutes, for reasons largely beyond the control of the Dean, have become increasingly insufficient for their needs. The Institutes have small, highly vulnerable operating budgets from general

**"There is little doubt that the Faculty has a lower level of funding per student than virtually any other law faculty in Canada."**

University funds, with the magnitude of budgetary cuts unavoidably amplified by the time they reach them. While the various parties do not blame each other for this state of affairs, and attitude which shows eminent good sense and restraint, it is surprising that existing arrangements have not led to strained relationships. The Institutes ought to have reasonable certainty about their core budgets and should be entitled to continuity of support.

### **Undergraduate Curriculum**

Because staff resources are stretched to capacity, some important academic matters have been left to student initiative. While these challenges may lead to greater student involvement from which they derive some benefits, the quality of education suffers. Some students may become resentful about their part in these activities, while others may become jealous of their

authority. In most law faculties, there is a first year program in legal research and writing to which a substantial number of full time teachers are assigned. In one Canadian law faculty, for example, at least one first year course is taught in small sections of 25 students, an extra hour per week throughout the academic year. The professor has a third year student assistant, who receives a stipend to help with marking.

As we understand the current system at McGill, the Board of Student Advisers was student initiated and one faculty member has assigned responsibilities for coordinating the program. Although 15 staff members participate in the legal writing program, most of the teaching is in effect done by third year students. While it is understandable that this arrangement is the result of lack of teaching resources, it is academically unsatisfactory. To a lesser degree, similar comments can be made about the Moot Court program. In most law faculties there is a greater investment of staff resources and clerical assistance. On the whole, the students expressed satisfaction with the content of these programs and with recent decisions to grant academic credits for work on the Moot Court Board, the Board of Student Advisors and the Law Journal. Some, however, were disappointed with the apparent lack of sufficient personal recognition by faculty members of their individual contributions.

One area of increasing importance to legal practitioners everywhere in Canada is the growth of administrative law due to the proliferation of boards and tribunals dealing with rentals, labour relations, etc. It was pointed out that courses

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offered by the Faculty do not do justice to this growing specialized field. Administrative law is particularly important in Quebec where much of this activity comes under provincial jurisdiction.

The complex interrelationship in the McGill context of the Civil Law and National Program requires equally complex and rather rigid rules. Most university programs in all disciplines regularly have to contend with attempts by a few students to evade requirements or to modify them for their own ease and comfort. The Faculty of Law, however, seems unduly apprehensive of this phenomenon and has possibly reacted in the past by increasing the bureaucracy. It is recognized that there has been a concerted effort in the last year to decrease the bureaucracy and to deregulate some aspects of the academic administration. Even so, it is felt that students would accept acknowledged high academic standards more gracefully, if there were a little less rigid insistence on rules.

The Student Affairs Office was perceived as being extremely helpful; and the general efficiency of scheduling of lectures, relatively rare cancellations of classes, etc., in the Faculty were considered laudable.

**Graduate Studies and Research**

It is difficult to judge the quantity and quality of research in the Faculty from the outside. It is apparent that the heavy teaching load of almost every faculty member significantly inhibits research activity. Greater opportunities for release time and the stabilization of support for the core budgets of the graduate

Institutes would undoubtedly make it easier for research units within the Faculty to qualify for programs such as the FCAC Centre Grants. As it is, too much of the information on research and scholarly work reported to us appears to consist of standard textbooks for specialist practitioners or notes in law journals.

We also noted the absence of the kind of research now common in American law schools, which is less traditionally oriented and closer to social sciences, in fields such as judicial behaviour, system support, or the delivery of legal services. Some of the comparative aspects of the

**"Law is not a value free discipline, and all members of the law school community are called upon constantly to exercise not only their powers of analysis and synthesis, but to make known their values and priorities."**

two professional programs might be put in better focus if there were greater emphasis on jurisprudence as a core subject. From a faculty of such historic repute, one would prefer to see more solid scholarly books and articles in prestigious journals, including those published in other countries.

Many of the students registered in the Institute of Air and Space Law are enrolled in a highly specialized program for professionals, rather than a research oriented graduate program. Because they come from such a variety of countries and backgrounds, their quality is often too variable for systematic advanced training in research methodology. More of them could, with advantage, be enrolled in the course oriented diploma program rather than in the master's program

which has a significant research component.

**Governance and Attitudes Towards Students**

In the best of conditions, a law faculty is a rather difficult and unruly organism: if we are all political animals, then law students and professors are more political than most.

Law is not a value free discipline, and all members of the law school community are called upon constantly to exercise not only their powers of analysis and synthesis, but to make known their values and priorities. The students, are, by and large, self selected over-achievers, who are articulate, intelligent and oversensitive about their own rights. This may, on occasion, give rise to grievances caused by misunderstandings.

In Quebec at the present time, a primarily anglophone law faculty teaching the Common Law as well as the Civil Law operates in a potentially stressful milieu. Accordingly, it is not surprising to find some tensions and some dissatisfaction among students and, to a lesser extent, among staff. These stresses do not appear to be due to friction based on personal differences. On the contrary, there seems to be a high degree of congeniality among staff members, and a gratifying degree of personal openness and frankness.

The Review Committee believes that the tensions between some students and some faculty are in part related to problems of governance, particularly that of student representation, and professorial attitudes. In our opinion, the source of student tension is not solely that of representation on Faculty Council; that particular issue is

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just a manifestation of a larger concern. Nevertheless, if four student representatives were acceptable a decade ago, then a significant increase in their number should be acceptable today as the faculty has grown considerably in size. The apparently vexing question of student representation on Faculty Council is not a recent development, according to a former Dean, but has persisted in one form or another for many years. Not is it a reflection of rabble rousing or an attempt to lower standards, although these factors may have played a part at times.

The experience of other universities and other faculties is that when students are present on Faculty Council in sufficient numbers they participate with maturity and great care; they do not pretend to speak in matters not within their experience; they take their responsibilities seriously; and they tend to divide on issues in much the same way as staff.

The activist students whom we met were reasonable, articulate, and bright, although sometimes angry. They made perfectly good sense for the most part, and were supported in most of their opinions by the more traditionalist students who met separately with the Review Committee. A number of students expressed a sense of frustration that no change in faculty attitudes towards them had occurred this year despite concerted efforts on their part to be more cooperative and to share in the work of the faculty. The students complained of the unavailability of some staff, but the more pertinent issue seemed to be a perception of prevailing faculty attitudes of brusqueness, lack of respect for students as individuals,

and paternalism. They sought to be treated as mature adults sharing a learning experience rather than as children to be controlled.

Although there are diverging opinions on students issues, as in all faculties, the most influential staff members set the tone. Since the program is dual, exploratory, and exciting, the staff members should ideally project these characteristics. When considered individually, they do; but when considered as a group, they project a more rigid attitude. After speaking

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with those junior faculty members and students who elected to be interviewed by the Review Committee, we sense a need for a more positive treatment of students, a less hierarchical image projected by some senior faculty members, less support for traditional approaches to legal issues, and generally more emphasis on a spirit of critical enquiry.

As is the case with many small professional faculties and schools, both at McGill and elsewhere, the approach to governance, of necessity, tends to be centralized, with a few senior faculty members occupying the majority of positions on important committees. If these senior faculty members reflect the broad spectrum of opinion in the faculty, it could be argued that this form of governance makes no difference; and, in fact, increases the level of efficiency in a faculty trying to do its best with a meager

resource allocation. On the other hand, if those senior faculty widely viewed as decision makers do not represent the consensus, the potentialities for a breakdown in collegiality merit serious consideration by the Faculty.

Collegiality, among other things, means a full sharing of information, an attempt to reach consensus on key decisions, and a minimization of status differences between older and younger faculty. Although there is clearly an attempt to solicit a wide range of opinion on key issues in the Faculty, there appears to be a hesitation, largely based on history and faculty traditions, to encourage full and open discussion.

**Admissions**

The demand from able and promising students for a career in law is still high in Canada, and the Faculty appears to be attracting a sufficient number of high quality applications. While admission procedures at McGill are adequate, a substantial effort to recruit students more aggressively could be made in the future. There is a perception that the Faculty may be losing some of the best Quebec anglophone students who apply to the McGill common law program, but ultimately register in the entering classes of other Canadian law faculties outside of Quebec. One professor with experience at other law schools, was of the opinion that the best students at McGill are comparable to anywhere else in North America and the median students are competitive. The last 10-15 admittances, especially in the B.C.L. program, tend to be of lower quality, thus creating a problem of widely varying abilities within certain classes.

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## Library

The library holdings of 115,000 to 120,000 volumes is very small in relation to the size of programs in the Faculty. The extent of the collection was considered adequate when there was only a program in Civil Law; but the dimension has changed with the addition of Common Law and National Programs. Furthermore, the facilities are particularly inadequate for the graduate programs. A distortion has been introduced into the Law Library budget by the commitment to buy, from university operating funds, everything published in Air and Space Law in English and French in order to maintain the existing, unique collection.

The Law Library is considered to be strong in Canadian and Quebec Law, legal Canadiana, Air and Space Law (best in North America), and in French, International and British Law. The major problem is that the acquisitions budget, assigned by the University Library System according to a historical formula that has not been reviewed in many years, is simply insufficient for the present needs of the faculty.

An additional concern is the inadequacy of reading and working space, especially for students. Since the library was constructed when the enrollment was smaller, there is now seating available for only 50% of the students. The seating space is insufficient for accreditation by U.S. standards. Because of severe space limitations there is no reading room for students and an accompanying lack of quiet areas in the library.

Library accessibility is good. The library is open 88 hours per week; faculty and selected graduate students have after hours privileges.

## Physical Resources

Apart from the concerns already expressed about severe space limitations within the law library, there is an insufficient number of offices in Old Chancellor Day Hall to accommodate the present academic staff if all were in residence at any given time, i.e. with no one on leave. If additional staff positions are provided as the result of the recommendations of the Review Committee, then the need for additional office space becomes even more critical.

**"The students interviewed were articulate and intelligent, including those perceived by some members of the academic staff as malcontents."**

## Academic Support Services

The law bookstore, which is operated by the students, is exemplary and works well.

As has generally been the case throughout the University, the Faculty of Law has had to cope with a reduction in the number of non-academic staff. This may have a greater effect in a field such as law, where the level of secretarial support required to ensure research productivity may be higher than in some other disciplines.

## Conclusion

The Faculty of Law at McGill is a good faculty that can become a great one. The potential is there, in its programs, in its faculty, and in its students. Its problems can be resolved -- some by increased allocations of resources from the University and others by the Faculty itself.

## Recommendations

Based on the contents of

our report, the ad hoc Review Committee for the Faculty of Law at McGill University makes the following recommendations to the Principal and Vice-Chancellor and to the Dean of the Faculty:

a. The lack of financial resources, compared to almost every other Canadian Faculty of Law, should be remedied by the addition of new positions, in stages over a period of two or three years, until a staff-student ratio close to the Canadian average of 1:14-17 is achieved. Increased numbers of full time staff are especially crucial for the McGill Faculty of Law because of the greater resource needs of its unique and successful National Program.

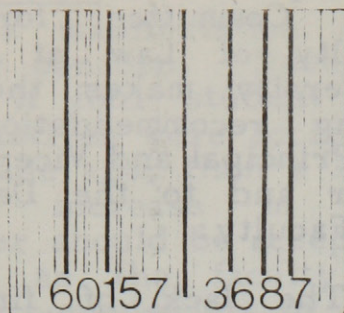
b. In order to facilitate and to derive maximum benefit from the accelerated program of faculty recruitment recommended above, the Staff Appointments Committee, presently limited to 4 members, should be enlarged to include at least 8 members (e.g. 6 academic staff and 2 students), broadly representative of all segments of the faculty.

c. The financial and physical resources of the Law Library should be increased to meet the special needs of the National Program, and to provide at least minimally acceptable seating and study space for students.

d. Sufficient office space should be provided to accommodate all full time academic staff, including the increased numbers recommended in this report.

e. The core financial support for the Institute of Comparative Law and the Institute of Air and Space Law should be placed on a more secure basis.





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